ESTTA Tracking number:

ESTTA242722

Filing date:

10/15/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Hillside Candy, LLC			
Entity	Limited Liability Company Citizenship Delaware			
Address	35 Hillside Avenue Hillside, NJ 07205 UNITED STATES			

Attorney	Richard M. Goldberg
information	Richard M. Goldberg
	25 East Salem Street Suite 419
	Hackensack, NJ 07601
	UNITED STATES
	goldbergpat@earthlink.net Phone:2013437775

Registration Subject to Cancellation

Registration No	2973273	Registration date	07/19/2005
Registrant	Natur-All Pty Ltd 307 Burwood Road Hawthorn, Victoria, 3122 AUSTRALIA		

Goods/Services Subject to Cancellation

Class 030. First Use: 1998/12/31 First Use In Commerce: 2001/02/28

All goods and services in the class are cancelled, namely: Nutritional health food snacks, namely, flour or grain or rice-based health bars containing fruits and/or nuts; health bars enrobed in carob, yoghurt or chocolate; biscuits, cakes, pastries; confectionery, namely, fruit enrobed in carob, yoghurt or chocolate

Grounds for Cancellation

Abandonment	Trademark Act section 14

Attachments	332-007-PETITION-CANCEL.pdf (22 pages)(1283744 bytes)
-------------	----------------------------------------------------------

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Richard M. Goldberg/
-----------	-----------------------

Name	Richard M. Goldberg
Date	10/15/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Registration No. 2,973,273

Mark: GO NATURAL & design

Date of Registration: July 19, 2005

HILLSIDE CANDY, LLC

Petitioner

v. Cancellation No.

:

NATUR-ALL PTY LTD

Registrant

PETITION TO CANCEL

TO:

Trademark Trial and Appeal Board Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, Virginia 22202-3514

Dear Sir:

HILLSIDE CANDY, LLC, a limited liability company organized and existing under the laws of state of Delaware, and having its principal place of business at 35 Hillside Avenue, Hillside, New Jersey 07205, believes that it is or will be damaged by the continued registration of the mark identified above and hereby petitions to cancel the same.

As grounds for this petition, Hillside Candy, LLC alleges:

1. To the best of the petitioner's knowledge, the current

owner of the registration is Natur-all Pty Ltd, an Australian company, having its last known principal place of business at 307 Burwood Road, Hawthorn, Victoria 3122, Australia.

- 2. Upon information and belief, Respondent has abandoned said registered trademark by discontinuing use of said trademark on and in connection with the goods encompassed by Registration No. 2,973,273.
- 3. Petitioner will be damaged by the continuance of U.S. Registration No. 2,973,273 in that the Trademark Office has refused registration of Petitioner's U.S. Application Serial No. 77/488,769 for the trademark GO NATURALLY in connection with ORGANIC CANDY in Class 30. The stated ground for the Examining Attorney's refusal is a likelihood of confusion with Respondent's registered trademark within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). A copy of the Examining Attorney's Office Action of September 24, 2008 is attached hereto as Exhibit A.
- 4. Payment of the \$300.00 fee for this Petition to Cancel is being made herewith by credit card.
- 5. The Commissioner is authorized to charge any deficiencies, or to credit any overpayment, to Deposit Account No. 07-1524.
- 6. All further correspondence should be directed to the undersigned at the below noted address and telephone number.

WHEREFORE, Petitioner prays that this Petition for Cancellation be granted and that Registration No. 2,973,273 be canceled.

Respectfully submitted,

JC10be 15, 2008

Date

Richard M. Goldbérg

Attorney for Petitioner

25 East Salem Street Suite 419 Hackensack, New Jersey 07601 TEL (201) 343-7775

FAX (201) 488-3884

e-mail: goldbergpat@earthlink.net

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing PETITION TO CANCEL was forwarded to Mark I. Peroff, Kirkpatrick & Lockhart Llp, 599 Lexington Avenue, New York, NY 10022-6030, the domestic representative for Natur-All Pty Ltd, by first class mail, postage prepaid, on October 15, 2008.

RICHARD M. GOLDBERG

EXHIBIT A

To:

HILLSIDE CANDY, I' (goldbergpat@earthlink.net)

Subject:

TRADEMARK APPLICATION NO. 77488769 - GO NATURALLY - 332/3/007

Sent:

9/24/2008 12:36:53 PM

Sent As:

ECOM104@USPTO.GOV

Attachments:

Attachment - 1

Attachment - 2

Attachment - 3

Attachment - 4

Attachment - 5

Attachment - 6

Attachment - 7

Attachment - 8

Attachment - 9
Attachment - 10

Attachment - 11

Attachment - 12

Attachment - 13

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO:

77/488769

MARK: GO NATURALLY

77488769

CORRESPONDENT ADDRESS:

RICHARD M. GOLDBERG RICHARD M. GOLDBERG 25 E SALEM ST STE 419 HACKENSACK, NJ 07601-7416 RESPOND TO THIS ACTION:

http://www.uspto.gov/teas/eTEASpageD.htm

GENERAL TRADEMARK INFORMATION: http://www.uspto.gov/main/trademarks.htm

APPLICANT:

HILLSIDE CANDY, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

332/3/007

CORRESPONDENT E-MAIL ADDRESS:

goldbergpat@earthlink.net

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 9/24/2008

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62, 2.65(a); TMEP §§711, 718.03.

SECTION 2(d) REFUSAL - LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 2973273. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq. See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. See 15 U.S.C. §1052(d). The court in In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). See TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. In re Majestic Distilling Co., 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); see In re E. I. du Pont, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade

cnannels of the goods and/or services. See In re Opus One, Inc., 60 USPQ2d 1812 (TTAB 2001); In re Dakin's Miniatures Inc., 59 USPQ2d 1593 (TTAB 1999); In re Azteca Rest. Enters., 5..., 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.(seq.

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. See In re Shell Oil Co., 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the registrant. TMEP §1207.01(d)(i); see Hewlett-Packard Co. v. Packard Press, Inc., 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

Comparison of Marks

The applicant's mark is "GO NATURALLY." The registrant's mark consists of a design element and the literal element "GO NATURAL."

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

When a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods and/or services. Therefore, the word portion is normally accorded greater weight in determining likelihood of confusion. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987); *Amoco Oil Co. v. Amerco, Inc.*, 192 USPQ 729, 735 (TTAB 1976); TMEP §1207.01(c)(ii).

The applicant's mark and the registrant's mark are closely similar in sound, appearance and commercial impression due to the mutual use of the wording "GO NATURAL." Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark. See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce, 228 USPQ 689 (TTAB 1986), aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); In re Phillips-Van Heusen Corp., 228 USPQ 949 (TTAB 1986) (21 CLUB and "21" CLUB (stylized)); In re Corning Glass Works, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); In re Collegian Sportswear Inc., 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); In re Pellerin Milnor Corp., 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); In re BASF A.G., 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §1207.01(b)(ii)-(iii).

Furthermore, both the applicant's mark and the registrant's mark begin with the wording "GO NATURAL." Consumers are generally more inclined to focus on the first word, prefix or syllable in any trademark or service mark. See Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772, 396 F. 3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); see also Mattel Inc. v. Funline Merch. Co., 81 USPQ2d 1372, 1374-75 (TTAB 2006); Presto Prods., Inc. v. Nice-Pak Prods., Inc., 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions).

Comparison of Goods

The applicant's goods are "organic candy." The registrant's goods are "Nutritional health food snacks, namely, flour or grain or rice-based health bars containing fruits and/or nuts; health bars enrobed in carob, yoghurt or chocolate; biscuits, cakes, pastries; confectionery, namely, fruit enrobed in carob, yoghurt or chocolate."

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. See Safety-Kleen Corp. v. Dresser Indus., Inc., 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. In re Total Quality Group, Inc., 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); see, e.g., On-line Careline Inc. v. Am. Online Inc., 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Likelihood of confusion is determined on the basis of the goods and/or services as they are identified in the application and registration. Hewlett-Packard Co. v. Packard Press Inc., 281 F.3d 1261, 1267-68, 62 USPQ2d 1001, 1004-05 (Fed. Cir. 2002); In re Shell Oil Co., 992 F.2d 1204, 1207 n.4, 26 USPQ2d 1687, 1690 n.4 (Fed. Cir. 1993); TMEP §1207.01(a)(iii).

In this case, applicant's goods are identified broadly. Therefore, it is presumed that the application encompasses all goods of the type described, including those in the registrant's more specific identification, that they move in all normal channels of trade, and that they are available to all potential customers. See TMEP §1207.01(a)(iii); see, e.g., In re Americor Health Servs., 1 USPQ2d 1670, 1670-71 (TTAB 1986); In re Equitable Bancorporation, 229 USPQ 709, 710 (TTAB 1986). The applicant's goods include the registrant's identification of goods because "fruit enrobed in carob, yogurt or chocolate" are types of candy. See Exhibits A-C.

If the goods of the respective parties are "similar in kind and/or closely related," the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b).

Thus, because the goods are related and the marks are similar, a Section 2(d) refusal is issued in the present case.

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in

support of registration.

Applicant should note the following additional and for refusal.

Potential Likelihood of Confusion - Prior Pending Mark

Information regarding pending Application Serial No. 77354249 is enclosed. The filing dates of the referenced applications precede applicant's filing date. There may be a likelihood of confusion under Trademark Act Section 2(d) between applicant's mark and the referenced marks. If one or more of the referenced applications registers, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §§1208 et seq. Therefore, upon entry of a response to this Office action, action on this case may be suspended pending final disposition of the earlier-filed applications.

If applicant believes that there is no potential conflict between this application and the earlier-filed applications, then applicant may present arguments relevant to the issue in a response to this Office action. The election not to submit arguments at this time in no way limits applicant's right to address this issue at a later point.

Applicant must respond to the requirement(s) set forth below.

Mark Differs in Specimen and Drawing

The mark on the specimen disagrees with the mark on the drawing. In this case, the specimen displays the mark as "GONATURALLY," while the drawing shows the mark as "GO NATURALLY."

The mark on the drawing must be a substantially exact representation of the mark as used on or in connection with the goods and/or services, as shown by the specimen. 37 C.F.R. §2.51(a); TMEP §807.12(a); see 37 C.F.R. §2.72(a)(1).

Therefore, applicant must submit one of the following:

- (1) A new drawing of the mark that agrees with the mark on the specimen but does not materially alter the original mark. See 37 C.F.R. §2.72(a); TMEP §§807.12(a), 807.14 et seq.; or
- (2) A substitute specimen showing use in commerce of the mark on the drawing, and the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §§2.20, 2.33: "The substitute specimen was in use in commerce at least as early as the filing date of the application." See 37 C.F.R. §2.59(a); TMEP §§807.12(a), 904.05. If submitting a specimen requires an amendment to the dates of use, applicant must also verify the amended dates. 37 C.F.R. §2.71(c); TMEP §904.05.

If applicant cannot satisfy one of the above requirements, applicant may amend the application from a use in commerce basis under Trademark Act Section 1(a) to an intent to use basis under Section 1(b), for which no specimen is required. See TMEP §806.03(c). However, if applicant amends the basis to Section 1(b), registration will not be granted until applicant later amends the application back to use in commerce by filing an acceptable allegation of use with a proper specimen. See 15 U.S.C. §1051(c)-(d); 37 C.F.R. §§2.76, 2.88; TMEP §1103. Substituting Basis

If applicant cannot comply with the requirement for the submission of an acceptable specimen for the Section 1(a) basis asserted, applicant can substitute a different basis if applicant can meet the requirements for the new basis. See TMEP §806.03.

In this case, applicant may wish to amend the application to assert a Section 1(b) basis.

The application was filed under Trademark Act Section 1(b); however, it does not include the required verified statement of applicant's "bona fide intention to use the mark in commerce." 15 U.S.C. §1051(b); 37 C.F.R. §2.34(a)(2); TMEP §§804.02, 806.01(b). Therefore, applicant must submit the following statement, verified with an affidavit or signed declaration under 37 C.F.R. §§2.20, 2.33:

Applicant has had a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application as of the application filing date.

Declaration for Substituting Basis

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), §1126(d) or §1126(e), he/she believes the applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)	

(Print or Type Name and Position)		
(Date)		

Declaration for Substitute Specimen

The following is a sample declaration under 37 C.F.R. §2.20 with a supporting statement for a substitute specimen:

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting there from, declares that the substitute specimen was in use in commerce at least as early as the filing date of the application; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)	
(Print or Type Name and Posit	tion)
(Date)	

Response

If applicant has questions about its application or needs assistance in responding to this Office action, please telephone the assigned trademark examining attorney.

To expedite prosecution of this application, applicant is encouraged to file its response to this Office action online via the Trademark Electronic Application System (TEAS), which is available at http://www.uspto.gov/teas/index.html.

/Angela Gaw/ Trademark Examining Attorney Law Office 104 Phone: (571) 272-1347

Fax: (571) 273-9104

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at http://www.uspto.gov/teas/eTEASpageD.htm, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For technical assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at http://tarr.uspto.gov. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

Print: Sep 24, 2008

77354249

DESIGN MARK

Serial Number

77354249

Status

REQUEST FOR EXTENSION OF TIME TO FILE OPPOSITION

Word Mark

GO NATURAL!

Standard Character Mark

Yes

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

Flavorbean Coffee Company LLC LIMITED LIABILITY COMPANY NEW YORK 230 All Angels Hill Road Wappingers Falls NEW YORK 125903329

Goods/Services

Class Status -- ACTIVE. IC 030. US 046. G & S: Coffee and coffee substitutes; Tea; Tea substitutes; Cocoa; Sugar and sugar substitutes; Honey; Honey substitutes; Salt; Candy. First Use: 2007/12/17. First Use In Commerce: 2007/12/17.

Filing Date

2007/12/18

Examining Attorney

GRAY, CAROLYN

GO NATURAL!

Print: Sep 24, 2008

78245161

DESIGN MARK

Serial Number

78245161

Status

REGISTERED

Word Mark

GO NATURAL

Standard Character Mark

No

Registration Number

2973273

Date Registered

2005/07/19

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

Natur-All Pty Ltd COMPANY AUSTRALIA 307 Burwood Road Hawthorn, Victoria AUSTRALIA 3122

Goods/Services

Class Status -- ACTIVE. IC 030. US 046. G & S: Nutritional health food snacks, namely, flour or grain or rice-based health bars containing fruits and/or nuts; health bars enrobed in carob, yoghurt or chocolate; biscuits, cakes, pastries; confectionery, namely, fruit enrobed in carob, yoghurt or chocolate. First Use: 1998/12/31. First Use In Commerce: 2001/02/28.

Description of Mark

The mark is comprised primarily of the stylized words "GO NATURAL" and a Bee design, on a solid black background.

Filing Date

2003/05/02

Examining Attorney

STRASER, RICHARD A

Print: Sep 24, 2008

78245161

Attorney of Record Mark I. Peroff



CandyDirect.Com







Our Price: \$68.22 Pounds: 10

Department

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Candy Bars
Gums
King Size
Mints
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Bulk Candy
Movie Candy
Specialty
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Fancy Chocelate
Fun Stuff

Chocolate Fruit Medley



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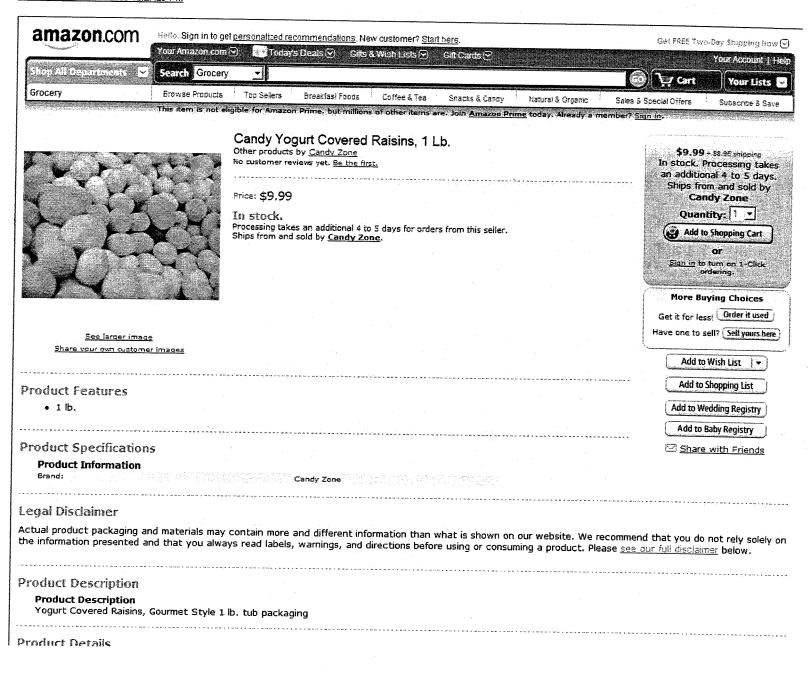


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his	product's forum (0 discussions)		
Dis	russion	Replies	Latest Post
Nα	discussions yet	American contractor	Andrew Co. C. C. Charles of the Control of the Cont
	questions, Share opinions, Gain insight rt a new discussion		
Тор	ic:	••••	
Acti	ve discussions in related forums		
	Discussion	Replies	Latest Post
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•	health Are microwave ovens unsafe, and do they make food unhealthy?	30	î hoer ago
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Θ	health Soy and breakthrough bleeding for postmenopause	0	2 hoars ago
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